

DONALD M. FALK (Cal. Bar #150256)  
SCHAERR | JAFFE LLP  
Four Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
Tel: (415) 562-4942  
dfalk@schaerr-jaffe.com

EUGENE VOLOKH (Cal. Bar #194464)  
SCHAERR | JAFFE LLP  
385 Charles East Young Dr. East  
Los Angeles, CA 90095  
Tel: (310) 206-3926  
evolokh@schaerr-jaffe.com

GENE C. SCHAERR (*pro hac vice*)  
H. CHRISTOPHER BARTOLOMUCCI (*pro hac vice*)  
EDWARD H. TRENT (*pro hac vice*)  
SCHAERR | JAFFE LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
Tel: (202) 787-1060  
gschaerr@schaerr-jaffe.com  
cbartolomucci@schaerr-jaffe.com  
etrent@schaerr-jaffe.com

*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GINA CARANO,	) Case No.: 2:24-cv-01009-SPG-SK
	)
Plaintiff,	) PLAINTIFF'S RESPONSE TO
	) DEFENDANTS' NOTICE OF
v.	) SUPPLEMENTAL AUTHORITY
	) [ECF NO. 43]
THE WALT DISNEY COMPANY,	)
et al.,	)
Defendants.	)

1 On July 3, 2024, Defendants, The Walt Disney Company, Lucasfilm  
2 Ltd. LLC, and Huckleberry Industries (US) Inc. (collectively, “Defendants”)  
3 submitted a Notice of Supplemental Authority, ECF No. 43, pointing the  
4 Court to the July 1, 2024, decision of the United States Supreme Court in  
5 *Moody v. NetChoice, LLC*, Nos. 22-277 and 22-255, 2024 WL 3237685 (U.S.  
6 July 1, 2024), which concerned a legal issue that has no application here.

7 That case concerned how social media “platforms make choices about  
8 what third-party speech to display and how to display it.” *Id.* at \*5. The  
9 issue involved the granting and denial of preliminary injunctions directed  
10 at laws in Florida and Texas that seek to regulate, at least in some  
11 instances, the content-moderation policies of social media companies. *Id.*  
12 The First Amendment was raised in that context because, “[w]hen the  
13 platforms use their Standards and Guidelines to decide which third-party  
14 content those feeds will display, or how the display will be ordered and  
15 organized, they are making expressive choices. And because that is true,  
16 they receive First Amendment protection.” *Id.* at \*15. The Court then  
17 proceeded with a discussion of its prior decisions on the exercise of “editorial  
18 judgment” in the context of the First Amendment, an issue not relevant  
19 here. *Id.* at \*5 (“The law then prevents exactly the kind of editorial  
20 judgments this Court has previously held to receive First Amendment  
21 protection.”); *see also id.* at \*9 (noting issues in case were about “whether  
22 there is an intrusion on protected editorial discretion” or “involve different  
23 levels of editorial choice”); \*12 (“The government may not, in supposed  
24 pursuit of better expressive balance, alter a private speaker’s own editorial  
25 choices about the mix of speech it wants to convey.”); \*14 (“The point is just  
26 that Texas’s law profoundly alters the platforms’ choices about the views  
27  
28

1 they will, and will not, convey.”); \*16 (referring to prior Court “decisions  
2 about editorial control” cited in Section III of the opinion).

3 In addressing the one aspect of the case that concerned such editorial  
4 judgment, the Court explained: “At bottom, Texas’s law requires the  
5 platforms to carry and promote user speech that they would rather discard  
6 or downplay. The platforms object that the law thus forces them to alter the  
7 content of their expression—a particular edited compilation of third-party  
8 speech.” *Id.* at \*10. As set out in Carano’s Response to Defendants’ Motion  
9 to Dismiss, ECF No. 37, that is not the kind of expression at issue here.

10 Finally, the Court did not ultimately decide the underlying First  
11 Amendment issues presented in *Moody*, but rather vacated both the  
12 Eleventh Circuit and Fifth Circuit’s opinions and remanded the cases for  
13 further consideration.<sup>1</sup> 2024 WL 3237685, at \*9 (“The parties have not  
14 briefed the critical issues here [related to a facial challenge to the statutes],  
15 and the record is underdeveloped. So we vacate the decisions below and  
16 remand these cases.”). Accordingly, the analysis in *Moody* is not applicable  
17 here and, as discussed in the June 12, 2024 hearing, the First Amendment  
18 issues that may ultimately be presented in this case are not resolvable on a  
19 Motion to Dismiss under the allegations of this Complaint. Rather, any  
20

21 \_\_\_\_\_  
22 <sup>1</sup> Because of this, four Justices found the discussion cited by Defendants as  
23 “nonbinding dicta,” *Moody*, 2024 WL 3237685, at \*28 (Alito, J., concurring,  
24 joined by Thomas & Gorsuch, JJ.), and unnecessary because “[f]aced with  
25 difficult constitutional issues arising in new contexts on undeveloped  
26 records, this Court should strive to avoid deciding more than is necessary.”  
27 *Id.* at \*19 (Jackson, J., concurring in part and concurring in the judgment).  
28 Indeed, the Court noted that the discussion in part III of its opinion, cited  
by Defendants, was simply “to ensure that the facial analysis proceeds on  
the right path in the courts below.” *Id.* at \*9.

1 such issues can and should be addressed on summary judgment after full  
2 discovery.

3  
4 Respectfully submitted,

5 Donald M. Falk (Cal. Bar #150256)  
6 SCHAERR | JAFFE LLP  
7 Four Embarcadero Center, Suite 1400  
8 San Francisco, CA 94111  
9 Tel: (415) 562-4942  
dfalk@schaerr-jaffe.com

10 Eugene Volokh (Cal. Bar #194464)  
11 SCHAERR | JAFFE LLP  
12 385 Charles East Young Dr. East  
13 Los Angeles, CA 90095  
14 Tel: (310) 206-3926  
evolokh@schaerr-jaffe.com

15 /s/ Gene C. Schaerr

16 Gene C. Schaerr\*

17 H. Christopher Bartolomucci\*

18 Edward H. Trent\*

19 SCHAERR | JAFFE LLP

20 1717 K Street NW, Suite 900

21 Washington, DC 20006

22 Tel: (202) 787-1060

gschaerr@schaerr-jaffe.com

cbartolomucci@schaerr-jaffe.com

etrent@schaerr-jaffe.com

23 \*Admitted *pro hac vice*

24 *Counsel for Plaintiff*

25  
26 Dated: July 11, 2024